

24 May 2007

## INFORMATION PAPER

SUBJECT: "Mixed Status Forces" Provision of the House version of HR.1585

1. Section 1621(b) of the National Defense Authorization bill (HR1585) as passed by the House of Representatives directs the Secretary of Defense to establish procedures allowing U.S. Northern Command to exercise command of National Guard forces which are not federalized but are under state control performing "full-time National Guard duty" under Title 32. The language refers to "mixed status forces" which are defined as National Guard units in title 32 status which are training or operating alongside active duty units.

2. In its recent report, the Commission of the National Guard and Reserve recommended that the Department of Defense create protocols under which federal forces could operate under the direction of State governors. Specifically, the Commission's recommendation #8 suggests that DoD establish procedures under which federal forces may be under the tactical or operational control (but not command) of state governors much as current doctrine allows U.S. forces to be placed under the tactical or operational control (but not command) of foreign allied nations.

3. Section 1621(b) of HR.1585 as reported by the House Armed Services Committee would do precisely the opposite. It directs the Secretary to develop policy mechanisms to place state forces under federal command.

4. A law purporting to place state-controlled militia forces under the command of federal military officers would be unconstitutional, unless such law requires the consent of the governor. For example, 32 USC 325 requires the consent of the governor to allow a Title 10 officer to exercise command over Title 32 members, even when that officer is a member of that State's National Guard who has been ordered to active duty." There is no mention of Governor consent in Sec. 1621(b) of HR.1585.

5. In addition to being constitutionally problematic, this section is unnecessary given that there are already multiple provisions of law under which a National Guard unit may be called or ordered out of its state status and into federal service. Further, National Guard officers can exercise dual-hat command under 32 USC 325 and federal officers may accept state commissions under 32 USC 315. As noted by the Commission, there currently are no law or policy provisions for state command or even tactical control of federal forces.

6. This provision was not based on any Department of Defense proposal. The Statement of Administration Policy dated 18 May 2007 opposes this provision.

# H.R.1585

## National Defense Authorization Act for Fiscal Year 2008 (Reported in House)

### **SEC. 1621. UNITED STATES NORTHERN COMMAND.**

#### **(a) Manpower Review-**

*(1) REVIEW BY CHAIRMAN OF THE JOINT CHIEFS OF STAFF-* Not later than one year after the date of the enactment of this Act, the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense a review of the civilian and military positions, job descriptions, and assignments within the United States Northern Command with the goal of significantly increasing the number of members of a reserve component assigned to, and civilians employed by, the United States Northern Command who have experience in the planning, training, and employment of forces for homeland defense missions, domestic emergency response, and providing military support to civil authorities.

*(2) SUBMISSION OF RESULTS OF REVIEW-* Not later than 90 days after the date on which the Secretary of Defense receives the results of the review under paragraph (1), the Secretary shall submit to Congress a copy of the results of the review, together with such recommendations as the Secretary considers appropriate to achieve the objectives of the review.

#### **(b) Command and Control of Mixed-Status Forces in Certain Missions-**

*(1) PROCEDURES REQUIRED-* The Secretary of Defense shall establish procedures under which an officer who is on active duty or an officer who is on full-time National Guard duty may command mixed-status forces in connection with the training and use of mixed-status forces for homeland defense missions, domestic emergency responses, and providing military support to civil authorities.

*(2) ELEMENTS OF PROCEDURES-* The procedures shall include measures to enable--

*(A) the Commander of United States Northern Command and subordinate commanders within the United States Northern Command to exercise command of such mixed-status forces; and*

*(B) the Adjutant General or other officers of the National Guard of a State to exercise command of such mixed-status forces.*

*(3) COORDINATION-* The Secretary of Defense shall establish the procedures in coordination with the Chairman of the Joint Chiefs of Staff, the Chief of the National Guard Bureau, and the Governors of the States.

(c) *Definitions- In this section:*

(1) *The term `United States Northern Command' means the combatant command the geographic area of responsibility of which includes the United States.*

(2) *the term `mixed-status forces' means units and members of the National Guard that are on full-time National Guard duty participating in an encampment, maneuver, training exercise, or operation with members of the armed forces on active duty.*

(3) *The term `State' means the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.*

(4) *The term `Governor', with respect to the District of Columbia, means the commanding general of the District of Columbia National Guard.*

(5) *The terms `active duty' and `full-time National Guard duty' have the meanings provided those terms by section 101 of title 10, United States Code.*

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## **HASC Report Language on Mixed Status Forces**

### **H.Rpt 110-146, p.477-478**

Section 1621—...The section would also require the Secretary of Defense to establish protocols and procedures to enable an officer in a title 10, United States Code, status or an officer in a title 32, United States Code, status to command mixed-status forces, comprised of units and personnel in *both title 10 and* \* title 32 status, in connection with the training and employment of those mixed-status forces during homeland defense missions, domestic emergency responses, and military support to civil authorities. This section would require that the protocols and procedures would include enabling the Commander of NORTHCOM and subordinate commanders within the NORTHCOM chain of command, as well as the adjutant general of a State, or officers subordinate to that adjutant general, to exercise command of such mixed status units. In making this recommendation, the committee notes that authority already exists within title 32, United States Code, to enable command of mixed-status forces and that the Army and the Air Force to varying degrees over the last decade have used that authority to create and employ such mixed status forces. Furthermore, the committee's recommendation in section 1624 of this title to expand a National Guard officer's ability to command such mixed status units is intended to facilitate the establishment of such command procedures and protocols. Moreover, the committee believes that the establishment of such protocols and procedures is a necessary precondition for the eventual appointment of a reserve component officer to command NORTHCOM.

*\* This is inaccurate. The language in the bill defines "mixed status forces" as units and members of the National Guard serving with active duty forces. The definition does not include active duty forces themselves.*